



General Assembly

February Session, 2018

Amendment

LCO No. 5797



Offered by:
SEN. FLEXER, 29th Dist.

To: Subst. House Bill No. 5429

File No. 673

Cal. No. 493

"AN ACT CONCERNING INCREASED PENALTIES FOR CERTAIN CIGARETTE AND TOBACCO TAX VIOLATIONS, A CONTINUING EDUCATION OPTION FOR CERTAIN EMBALMERS OR FUNERAL DIRECTORS AND THE IMPOSITION OF THE TOBACCO PRODUCTS TAX ON CIGARS."

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. Subsection (a) of section 12-286a of the general statutes is
4 repealed and the following is substituted in lieu thereof (*Effective*
5 *October 1, 2019*):

6 (a) Each distributor and each dealer, as defined in section 12-285,
7 shall place and maintain in legible condition at each point of sale of
8 cigarettes to consumers, including the front of each vending machine,
9 and each restricted cigarette vending machine a notice which states (1)
10 that the sale, giving or delivering of tobacco products, including
11 cigarettes, to any person under [eighteen] twenty-one years of age,
12 except a person described in subsection (g) of section 53-344, as

13 amended by this act, is prohibited by section 53-344, as amended by
14 this act, (2) the purchase or misrepresentation of age by a person under
15 [eighteen] twenty-one years of age, except a person described in
16 subsection (g) of section 53-344, as amended by this act, to purchase
17 cigarettes or tobacco products is prohibited by said section 53-344, and
18 (3) the penalties and fines for violating said section 53-344 and section
19 12-295a.

20 Sec. 502. Subsection (a) of section 12-295 of the general statutes is
21 repealed and the following is substituted in lieu thereof (*Effective*
22 *October 1, 2019*):

23 (a) The commissioner may suspend or revoke the license of any
24 dealer or distributor for failure to comply with any provision of this
25 chapter or regulations related thereto or for the sale or delivery of
26 tobacco in any form to a [minor under eighteen] person under twenty-
27 one years of age, except a person described in subsection (g) of section
28 53-344, as amended by this act, following a hearing with respect to
29 which notice in writing, specifying the time and place of such hearing
30 and requiring such dealer or distributor to show cause why such
31 license should not be revoked, is mailed or delivered to such dealer or
32 distributor not less than ten days preceding the date of such hearing.
33 Such notice may be served personally or by registered or certified mail.

34 Sec. 503. Section 53-344 of the 2018 supplement to the general
35 statutes is repealed and the following is substituted in lieu thereof
36 (*Effective October 1, 2019*):

37 (a) As used in this section:

38 (1) "Cardholder" means any person who presents a driver's license
39 or an identity card to a seller or seller's agent or employee, to purchase
40 or receive tobacco from such seller or seller's agent or employee;

41 (2) "Identity card" means an identification card issued in accordance
42 with the provisions of section 1-1h;

43 (3) "Transaction scan" means the process by which a seller or seller's
44 agent or employee checks, by means of a transaction scan device, the
45 validity of a driver's license or an identity card; and

46 (4) "Transaction scan device" means any commercial device or
47 combination of devices used at a point of sale that is capable of
48 deciphering in an electronically readable format the information
49 encoded on the magnetic strip or bar code of a driver's license or an
50 identity card.

51 (b) Any person who sells, gives or delivers to any person under
52 [eighteen] twenty-one years of age tobacco shall be fined not more
53 than two hundred dollars for the first offense, not more than three
54 hundred fifty dollars for a second offense within a twenty-four-month
55 period and not more than five hundred dollars for each subsequent
56 offense within a twenty-four-month period. The provisions of this
57 subsection shall not apply to a person under [eighteen] twenty-one
58 years of age who is delivering or accepting delivery of tobacco (1) in
59 such person's capacity as an employee, or (2) as part of a scientific
60 study being conducted by an organization for the purpose of medical
61 research to further efforts in tobacco use prevention and cessation,
62 provided such medical research has been approved by the
63 organization's institutional review board, as defined in section 21a-408.

64 (c) Any person under [eighteen] twenty-one years of age who
65 purchases or misrepresents such person's age to purchase tobacco in
66 any form or possesses tobacco in any form in any public place shall be
67 fined not more than fifty dollars for the first offense and not less than
68 fifty dollars or more than one hundred dollars for each subsequent
69 offense. For purposes of this subsection, "public place" means any area
70 that is used or held out for use by the public whether owned or
71 operated by public or private interests.

72 (d) (1) A seller or seller's agent or employee may perform a
73 transaction scan to check the validity of a driver's license or identity
74 card presented by a cardholder as a condition for selling, giving away

75 or otherwise distributing tobacco to the cardholder.

76 (2) If the information deciphered by the transaction scan performed
77 under subdivision (1) of this subsection fails to match the information
78 printed on the driver's license or identity card presented by the
79 cardholder, or if the transaction scan indicates that the information so
80 printed is false or fraudulent, neither the seller nor any seller's agent or
81 employee shall sell, give away or otherwise distribute any tobacco to
82 the cardholder.

83 (3) Subdivision (1) of this subsection does not preclude a seller or
84 seller's agent or employee from using a transaction scan device to
85 check the validity of a document other than a driver's license or an
86 identity card, if the document includes a bar code or magnetic strip
87 that may be scanned by the device, as a condition for selling, giving
88 away or otherwise distributing tobacco to the person presenting the
89 document.

90 (e) (1) No seller or seller's agent or employee shall electronically or
91 mechanically record or maintain any information derived from a
92 transaction scan, except the following: (A) The name and date of birth
93 of the person listed on the driver's license or identity card presented by
94 a cardholder; (B) the expiration date and identification number of the
95 driver's license or identity card presented by a cardholder.

96 (2) No seller or seller's agent or employee shall use a transaction
97 scan device for a purpose other than the purposes specified in
98 subsection (e) of section 53-344b, as amended by this act, subsection (d)
99 of this section or subsection (c) of section 30-86.

100 (3) No seller or seller's agent or employee shall sell or otherwise
101 disseminate the information derived from a transaction scan to any
102 third party, including, but not limited to, selling or otherwise
103 disseminating that information for any marketing, advertising or
104 promotional activities, but a seller or seller's agent or employee may
105 release that information pursuant to a court order.

106 (4) Nothing in subsection (d) of this section or this subsection
107 relieves a seller or seller's agent or employee of any responsibility to
108 comply with any other applicable state or federal laws or rules
109 governing the sale, giving away or other distribution of tobacco.

110 (5) Any person who violates this subsection shall be subject to a civil
111 penalty of not more than one thousand dollars.

112 (f) (1) In any prosecution of a seller or seller's agent or employee for
113 a violation of subsection (b) of this section, it shall be an affirmative
114 defense that all of the following occurred: (A) A cardholder attempting
115 to purchase or receive tobacco presented a driver's license or an
116 identity card; (B) a transaction scan of the driver's license or identity
117 card that the cardholder presented indicated that the license or card
118 was valid; and (C) the tobacco was sold, given away or otherwise
119 distributed to the cardholder in reasonable reliance upon the
120 identification presented and the completed transaction scan.

121 (2) In determining whether a seller or seller's agent or employee has
122 proven the affirmative defense provided by subdivision (1) of this
123 section, the trier of fact in such prosecution shall consider that
124 reasonable reliance upon the identification presented and the
125 completed transaction scan may require a seller or seller's agent or
126 employee to exercise reasonable diligence and that the use of a
127 transaction scan device does not excuse a seller or seller's agent or
128 employee from exercising such reasonable diligence to determine the
129 following: (A) Whether a person to whom the seller or seller's agent or
130 employee sells, gives away or otherwise distributes tobacco is
131 [eighteen] twenty-one years of age or older; and (B) whether the
132 description and picture appearing on the driver's license or identity
133 card presented by a cardholder is that of the cardholder.

134 (g) Notwithstanding the provisions of subsections (b) to (f),
135 inclusive, of this section, any person who is eighteen years of age or
136 older prior to October 1, 2019, may purchase and possess tobacco
137 products in any form.

138 Sec. 504. Section 53-344b of the 2018 supplement to the general
139 statutes is repealed and the following is substituted in lieu thereof
140 (*Effective October 1, 2019*):

141 (a) As used in this section and sections 21a-415 and 21a-415a:

142 (1) "Electronic nicotine delivery system" means an electronic device
143 that may be used to simulate smoking in the delivery of nicotine or
144 other substance to a person inhaling from the device, and includes, but
145 is not limited to, an electronic cigarette, electronic cigar, electronic
146 cigarillo, electronic pipe or electronic hookah and any related device
147 and any cartridge, electronic cigarette liquid or other component of
148 such device;

149 (2) "Cardholder" means any person who presents a driver's license
150 or an identity card to a seller or seller's agent or employee, to purchase
151 or receive an electronic nicotine delivery system or vapor product from
152 such seller or seller's agent or employee;

153 (3) "Identity card" means an identification card issued in accordance
154 with the provisions of section 1-1h;

155 (4) "Transaction scan" means the process by which a seller or seller's
156 agent or employee checks, by means of a transaction scan device, the
157 validity of a driver's license or an identity card;

158 (5) "Transaction scan device" means any commercial device or
159 combination of devices used at a point of sale that is capable of
160 deciphering in an electronically readable format the information
161 encoded on the magnetic strip or bar code of a driver's license or an
162 identity card;

163 (6) "Sale" or "sell" means an act done intentionally by any person,
164 whether done as principal, proprietor, agent, servant or employee, of
165 transferring, or offering or attempting to transfer, for consideration, an
166 electronic nicotine delivery system or vapor product, including
167 bartering or exchanging, or offering to barter or exchange, an

168 electronic nicotine delivery system or vapor product;

169 (7) "Give" or "giving" means an act done intentionally by any
170 person, whether done as principal, proprietor, agent, servant or
171 employee, of transferring, or offering or attempting to transfer,
172 without consideration, an electronic nicotine delivery system or vapor
173 product;

174 (8) "Deliver" or "delivering" means an act done intentionally by any
175 person, whether as principal, proprietor, agent, servant or employee,
176 of transferring, or offering or attempting to transfer, physical
177 possession or control of an electronic nicotine delivery system or vapor
178 product;

179 (9) "Vapor product" means any product that employs a heating
180 element, power source, electronic circuit or other electronic, chemical
181 or mechanical means, regardless of shape or size, to produce a vapor
182 that may or may not include nicotine, that is inhaled by the user of
183 such product; and

184 (10) "Electronic cigarette liquid" means a liquid that, when used in
185 an electronic nicotine delivery system or vapor product, produces a
186 vapor that may or may not include nicotine and is inhaled by the user
187 of such electronic nicotine delivery system or vapor product.

188 (b) Any person who sells, gives or delivers to any person under
189 [eighteen] twenty-one years of age an electronic nicotine delivery
190 system or vapor product in any form shall be fined not more than two
191 hundred dollars for the first offense, not more than three hundred fifty
192 dollars for a second offense within a twenty-four-month period and
193 not more than five hundred dollars for each subsequent offense within
194 a twenty-four-month period. The provisions of this subsection shall
195 not apply to a person under [eighteen] twenty-one years of age who is
196 delivering or accepting delivery of an electronic nicotine delivery
197 system or vapor product (1) in such person's capacity as an employee,
198 or (2) as part of a scientific study being conducted by an organization
199 for the purpose of medical research to further efforts in tobacco use

200 prevention and cessation, provided such medical research has been
201 approved by the organization's institutional review board, as defined
202 in section 21a-408.

203 (c) Any person under [eighteen] twenty-one years of age who
204 purchases or misrepresents such person's age to purchase an electronic
205 nicotine delivery system or vapor product in any form or possesses an
206 electronic nicotine delivery system or vapor product in any form in
207 any public place shall be fined not more than fifty dollars for the first
208 offense and not less than fifty dollars or more than one hundred
209 dollars for each subsequent offense. For purposes of this subsection
210 "public place" means any area that is used or held out for use by the
211 public whether owned or operated by public or private interests.

212 (d) (1) A seller or seller's agent or employee may perform a
213 transaction scan to check the validity of a driver's license or identity
214 card presented by a cardholder as a condition for selling, giving or
215 otherwise delivering an electronic nicotine delivery system or vapor
216 product to the cardholder.

217 (2) If the information deciphered by the transaction scan performed
218 under subdivision (1) of this subsection fails to match the information
219 printed on the driver's license or identity card presented by the
220 cardholder, or if the transaction scan indicates that the information so
221 printed is false or fraudulent, neither the seller nor any seller's agent or
222 employee shall sell, give or otherwise deliver any electronic nicotine
223 delivery system or vapor product to the cardholder.

224 (3) Subdivision (1) of this subsection does not preclude a seller or
225 seller's agent or employee from using a transaction scan device to
226 check the validity of a document other than a driver's license or an
227 identity card, if the document includes a bar code or magnetic strip
228 that may be scanned by the device, as a condition for selling, giving or
229 otherwise delivering an electronic nicotine delivery system or vapor
230 product to the person presenting the document.

231 (e) (1) No seller or seller's agent or employee shall electronically or

232 mechanically record or maintain any information derived from a
233 transaction scan, except the following: (A) The name and date of birth
234 of the person listed on the driver's license or identity card presented by
235 a cardholder; and (B) the expiration date and identification number of
236 the driver's license or identity card presented by a cardholder.

237 (2) No seller or seller's agent or employee shall use a transaction
238 scan device for a purpose other than the purposes specified in
239 subsection (d) of this section, subsection (d) of section 53-344, as
240 amended by this act, or subsection (c) of section 30-86.

241 (3) No seller or seller's agent or employee shall sell or otherwise
242 disseminate the information derived from a transaction scan to any
243 third party, including, but not limited to, selling or otherwise
244 disseminating that information for any marketing, advertising or
245 promotional activities, but a seller or seller's agent or employee may
246 release that information pursuant to a court order.

247 (4) Nothing in subsection (d) of this section or this subsection
248 relieves a seller or seller's agent or employee of any responsibility to
249 comply with any other applicable state or federal laws or rules
250 governing selling, giving or otherwise delivering electronic nicotine
251 delivery systems or vapor products.

252 (5) Any person who violates this subsection shall be subject to a civil
253 penalty of not more than one thousand dollars.

254 (f) (1) In any prosecution of a seller or seller's agent or employee for
255 a violation of subsection (b) of this section, it shall be an affirmative
256 defense that all of the following occurred: (A) A cardholder attempting
257 to purchase or receive an electronic nicotine delivery system or vapor
258 product presented a driver's license or an identity card; (B) a
259 transaction scan of the driver's license or identity card that the
260 cardholder presented indicated that the license or card was valid; and
261 (C) the electronic nicotine delivery system or vapor product was sold,
262 given or otherwise delivered to the cardholder in reasonable reliance
263 upon the identification presented and the completed transaction scan.

264 (2) In determining whether a seller or seller's agent or employee has
265 proven the affirmative defense provided by subdivision (1) of this
266 section, the trier of fact in such prosecution shall consider that
267 reasonable reliance upon the identification presented and the
268 completed transaction scan may require a seller or seller's agent or
269 employee to exercise reasonable diligence and that the use of a
270 transaction scan device does not excuse a seller or seller's agent or
271 employee from exercising such reasonable diligence to determine the
272 following: (A) Whether a person to whom the seller or seller's agent or
273 employee sells, gives or otherwise delivers an electronic nicotine
274 delivery system or vapor product is ~~[eighteen]~~ twenty-one years of age
275 or older; and (B) whether the description and picture appearing on the
276 driver's license or identity card presented by a cardholder is that of the
277 cardholder.

278 (g) Each seller of electronic nicotine delivery systems or vapor
279 products or such seller's agent or employee shall require a person who
280 is purchasing or attempting to purchase an electronic nicotine delivery
281 system or vapor product, whose age is in question, to exhibit proper
282 proof of age. If a person fails to provide such proof of age, such seller
283 or seller's agent or employee shall not sell an electronic nicotine
284 delivery system or vapor product to the person. As used in this
285 subsection, "proper proof" means a motor vehicle operator's license, a
286 valid passport or an identity card issued in accordance with the
287 provisions of section 1-1h.

288 (h) Notwithstanding the provisions of subsections (b) to (f),
289 inclusive, of this section, any person who is eighteen years of age or
290 older prior to October 1, 2019, may purchase and possess an electronic
291 nicotine delivery system or vapor product.

292 Sec. 505. Section 12-295a of the general statutes is repealed and the
293 following is substituted in lieu thereof (*Effective October 1, 2019*):

294 (a) If the Commissioner of Revenue Services finds, after a hearing,
295 that a ~~[minor]~~ person under twenty-one years of age, except a person

296 described in subsection (g) of section 53-344, as amended by this act,
297 has purchased cigarettes or tobacco products, said commissioner shall
298 assess such [minor] person a civil penalty of not more than one
299 hundred dollars for the first violation and not more than one hundred
300 fifty dollars for any second or subsequent offense within twenty-four
301 months after the first violation.

302 (b) If said commissioner finds, after a hearing, that any [person
303 employed by] employee of a dealer or distributor, as defined in section
304 12-285, has sold, given or delivered cigarettes or tobacco products to a
305 [minor] person under twenty-one years of age, except a person
306 described in subsection (g) of section 53-344, as amended by this act,
307 other than [a minor] such person who is delivering or accepting
308 delivery in his capacity as an employee, said commissioner shall, for
309 the first violation, require such [person] employee who sold, gave or
310 delivered the cigarettes or tobacco products to successfully complete
311 an online tobacco prevention education program administered by the
312 Department of Mental Health and Addiction Services not later than
313 thirty days after said commissioner's finding. Said commissioner shall
314 assess any [person] employee of a dealer or distributor who fails to
315 complete such program a civil penalty of two hundred dollars. Said
316 commissioner shall assess any [person employed by] employee of a
317 dealer or distributor a civil penalty of two hundred fifty dollars for a
318 second or subsequent violation within twenty-four months after the
319 first violation.

320 (c) If said commissioner finds, after a hearing, that any dealer or
321 distributor has sold, given or delivered cigarettes or tobacco products
322 to a [minor] person under twenty-one years of age, except a person
323 described in subsection (g) of section 53-344, as amended by this act,
324 other than [a minor] such person who is delivering or accepting
325 delivery in his capacity as an employee, or such dealer or distributor's
326 employee has sold, given or delivered cigarettes or tobacco products to
327 such [minor] person, said commissioner shall require such dealer or
328 distributor, for the first violation, to successfully complete an online
329 tobacco prevention education program administered by the

330 Department of Mental Health and Addiction Services not later than
331 thirty days after said commissioner's finding. Said commissioner shall
332 assess any dealer or distributor who fails to complete such program a
333 civil penalty of three hundred dollars. Said commissioner shall assess
334 any dealer or distributor a civil penalty of seven hundred fifty dollars
335 for a second violation within twenty-four months of the first violation.
336 For a third violation within twenty-four months of the first violation,
337 such dealer or distributor shall be assessed a civil penalty of seven
338 hundred fifty dollars and any license held by such dealer or distributor
339 under this chapter shall be suspended for not less than thirty days.

340 (d) If said commissioner finds, after a hearing, that any owner of an
341 establishment in which a cigarette vending machine or restricted
342 cigarette vending machine is located has sold, given or delivered
343 cigarettes or tobacco products from any such machine to a [minor]
344 person under twenty-one years of age, except a person described in
345 subsection (g) of section 53-344, as amended by this act, other than [a
346 minor] such person who is delivering or accepting delivery in his
347 capacity as an employee, or has allowed cigarettes or tobacco products
348 to be sold, given or delivered to [such minor] a person under twenty-
349 one years of age, except a person described in subsection (g) of section
350 53-344, as amended by this act, from any such machine, said
351 commissioner shall require such owner, for the first violation, to
352 successfully complete an online tobacco prevention education program
353 administered by the Department of Mental Health and Addiction
354 Services not later than thirty days after said commissioner's finding.
355 Said commissioner shall assess any owner who fails to complete such
356 program a civil penalty of five hundred dollars. Said commissioner
357 shall assess any owner a civil penalty of seven hundred fifty dollars for
358 a second violation within twenty-four months of the first violation. For
359 a third violation within twenty-four months of the first violation, such
360 owner shall be assessed a civil penalty of seven hundred fifty dollars
361 and any such machine shall be immediately removed from such
362 establishment and no such machine may be placed in such
363 establishment for a period of one year following such removal.

364 (e) Any person aggrieved by any action of the commissioner
365 pursuant to this section may take any appeal of such action as
366 provided in sections 12-311 and 12-312."

This act shall take effect as follows and shall amend the following sections:		
Sec. 501	<i>October 1, 2019</i>	12-286a(a)
Sec. 502	<i>October 1, 2019</i>	12-295(a)
Sec. 503	<i>October 1, 2019</i>	53-344
Sec. 504	<i>October 1, 2019</i>	53-344b
Sec. 505	<i>October 1, 2019</i>	12-295a